

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1625 South 900 West • PO Box 30408 • Salt Lake City, UT 84130-0408 • (801) 977-6800 • FAX (801) 977-6888
www.abc.utah.gov

BEER WHOLESALER LICENSE APPLICATION CHECKLIST

Dear Applicant:

The items below must be completed and submitted by the **10th of the month** before any action can be taken by the Utah Alcoholic Beverage Control Commission. You will be notified of the next monthly commission meeting when your application will be considered for issuance of a license.

1. Completed application (form enclosed).
2. Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of articles of incorporation;
 - b) if a partnership, submit a copy of written agreement;
 - c) if a limited liability company, submit a copy of the articles of organization.
3. Criminal history background check information (see application).
4. Local Consent from either city/town council if premises located in incorporated area or county commission if unincorporated area (form enclosed).
5. \$10,000 beer wholesaler cash or corporate surety bond (form enclosed).
6. Brand & Territorial Agreement(s) between beer wholesaler and each brewer/importer, reflecting brands of beer as well as geographical areas for distribution (form enclosed).
7. Copy of current federal basic permit.
8. Copy of current local business license.
9. Certificate of public liability insurance.
10. Scaled floor plan of premises highlighting the areas where beer (4.0% by volume) will be stored.
11. \$100 application fee (non-refundable).
12. \$300 annual license fee (refundable if license not granted). Make checks payable to Utah Department of Alcoholic Beverage Control.

Enclosed are copies of Utah laws and commission rules pertaining to beer wholesalers. If you have any questions concerning these forms or the application process, please contact our Licensing and Compliance Division at (801) 977 6800.

APPLICATION FOR BEER WHOLESALER LICENSE

8. **Criminal History.** The law prohibits persons who have been convicted of certain crimes from being in the alcoholic beverage business. This applies to any applicant, proprietor, partner, managing agent, director, or officer of the business. This also applies to any stockholder owning at least 20% of the corporation stock, or if a limited liability company, any member owning at least 20% of the company. Please list all criminal offenses other than minor traffic offenses of which you or any of these persons (including persons listed in subparagraph 7) have ever been convicted.

NAME

CRIMINAL OFFENSE

DATE OF CONVICTION

In addition, a criminal history **background check** must be furnished on each person listed above and in subparagraph 6. This may be done as follows:

- a. Utah residents:** If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.
- b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years** shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

An informed consent and release of liability form is included with this information.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

9. List any other warehouse locations: _____

10. List any other alcoholic licenses held by applicant or principals:

11. List beer brands (4.0% by volume) distributed (add additional sheets if necessary):

12. By signing below, the applicant attests that:

a) the applicant is at least 21 years of age.

b) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the license holder.

c) he/she has read and will abide by the provisions of Section 32A, Utah Code and all rules and directives of the Utah Department of Alcoholic Beverage Control; and understands that failure to adhere thereto shall constitute grounds for removal of said license.

d) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

e) he/she has read and understands the statements made herein; that execution thereof is done voluntarily and by authorization of said organization, and that any false statement made on this application or any related document is a second degree felony.

13. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a Beer Wholesaler license and certifies the information contained herein and attached hereto to be true and correct.

Date: _____

Applicant/owner of business

Authorized signature

Name/title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me this _____ day of

_____, _____.

Notary Public

SEAL:

**LOCAL CONSENT
BEER WHOLESALER**

Date _____

Utah Department of Alcoholic Beverage Control
Licensing and Compliance Section
1625 So 900 West
PO Box 30408
Salt Lake City, Utah 84130

Gentlemen:

_____(City)(Town)(County) hereby
grants its consent to the issuance of a Beer Wholesaler license to _____
_____, Beer Wholesaler, located at
_____, pursuant to
the provisions of Section 32A-11, Utah Code for the purpose of importation,
purchase, and storage of light beer (4.0% by volume) on premises; and for sale and
distribution to licensed retail accounts.

Authorized Signature

Name/Title

“BEER WHOLESALING BOND”

BOND # _____

KNOW ALL PERSONS BY THESE PRESENTS:

That **Principal**, _____, a beer wholesaling licensee, doing business as _____, and **Surety**, _____, a corporation organized and existing under the laws of the state of _____ and authorized to do business in Utah, are held and bound unto the Utah Department of Alcoholic Beverage Control in the sum of **\$10,000**, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this _____ day of _____, _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for a beer wholesaling licensee pursuant to the provisions of 32A-11, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32A, Utah Code, and the rules and directives of the Utah Alcoholic Beverage Control Commission and the Utah Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules and directives or orders as the commission or department may issue, then this bond shall be in full force and effect and payable to the Utah Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective _____ unless canceled by service of written notice upon the Utah Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said licensee / principal.

Surety

Principal / Licensee

Attorney in fact

Authorized signature

{ Corporate Seal }

Name / Title

STATUTORY AFFIDAVIT FOR CORPORATE SURETY

STATE OF: _____

COUNTY OF: _____

On the _____ day of _____, _____, personally appeared before me, _____, who, being by me duly sworn, did say that he / she is the attorney in fact of _____, **Surety**, and that said instrument was signed in behalf of said surety by authority, and acknowledged to me that he / she as such attorney in fact executed the same.

Notary Public Signature & Seal

Note: *Corporate surety's own affidavit also acceptable*

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 11 - Beer Wholesaling Licenses

32A-11-101. COMMISSION'S POWER TO ISSUE LICENSES.

(1)(a) The commission may issue beer wholesaling licenses for the import, purchase, storage, sale, and distribution of beer.

(b) The license entitles the licensee to:

- (i) purchase and import beer into the state;
- (ii) store beer in approved warehouses; and
- (iii) sell and distribute beer directly to:

(A) a licensed beer retailer;

(B) a holder of a single event permit issued by the commission pursuant to Chapter 7, Single Event Permits; and

(C) a holder of a temporary retail beer permit issued by the commission for a temporary special event pursuant to Chapter 10, Part 3, Temporary Special Event Beer Permits.

(2)(a) A person may not import, purchase, store, sell, or distribute beer to retailers or act in any way as a beer wholesaler unless the person has been issued a beer wholesaler's license by the commission.

(b) Nothing in this section precludes a small brewer from selling beer it has manufactured directly to a licensed beer retailer.

(c) Violation of this subsection is a class A misdemeanor.

(3) The commission may prescribe by policy, directive, or rule, consistent with this title, the general operational requirements of wholesaling licensees relating to physical facilities, conditions of purchase, storage, sale, importation, distribution, or transportation of beer within the state.

32A-11-102. APPLICATION AND RENEWAL REQUIREMENTS.

(1) A person seeking a beer wholesaling license under this chapter shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

(a) a nonrefundable \$250 application fee;

(b) an initial license fee of \$2,000, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) a bond as specified in Section 32A-11-105;

(f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, or any peace officer unrestricted right to enter the licensed premises;

(h) a statement of the brands of beer the applicant is authorized to sell and distribute;

(i) a statement of all geographical areas in which the applicant is authorized to sell and distribute beer;

(j) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the beer wholesaling license application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and

(k) any other documents and evidence as the department may direct.

(2)(a)(i) All beer wholesaling licenses expire on December 31 of each year.

(ii) A person desiring to renew that person's beer wholesaling license shall submit by no later than November 30 of the year the license expires:

(A) a completed renewal application to the department; and

(B) a renewal fee in the following amount:

<u>Case Sales in Previous License Year for the Licensee</u>	<u>Renewal Fee</u>
under 500,000 cases	\$1,000
equals or exceeds 500,000 cases but less than 1,000,000 cases	\$2,000
equals or exceeds 1,000,000 cases	\$3,000.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires.

(iv) Renewal applications shall be in a form prescribed by the department.

(b) The annual renewal fee prescribed in this Subsection (2) is independent of any like license fee which may be assessed by the local authority of the city or county in which the wholesaler's warehouse is located. Any local fees may not exceed \$300. Payment of local fees shall be made directly to the local authority assessing the local fees.

(3) To ensure compliance with Subsection 32A-11-106(7), the commission may suspend or revoke a beer wholesaling license if a beer wholesaling licensee does not immediately notify the department of any change in:

- (a) ownership of the licensee;
- (b) for a corporate owner, the:
 - (i) corporate officers or directors; or
 - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (c) for a limited liability company:
 - (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.

32A-11-103. Qualifications.

(1) (a) The commission may not issue a beer wholesaling license to any person who has been convicted of:

- (i) a felony under any federal or state law;
- (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic products;
- (iii) any crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
- (vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for the wholesaler has been convicted of any offense as provided in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a beer wholesaling license if after the day on which the beer wholesaling license is granted, a person described in Subsection (1)(a), (b), or (c):

- (a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or
- (b) on or after the day on which the license is granted:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of a beer wholesaling license according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant a beer wholesaling license to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a beer wholesaling license to an applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation, or member who owns at least 20% of the applicant limited liability company is or was:

(A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a beer wholesaling license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) a partner or managing agent of the applicant partnership;

(ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) any manager or member who owns at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted a beer wholesaling license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of the limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be:

(i) granted a beer wholesaling license; or

(ii) employed by a licensee to handle beer.

(b) The commission may not grant a beer wholesaling license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability

company.

(6) (a) A beer wholesaler may not be issued, directly or indirectly, nor hold, through any wholly or partially owned subsidiaries or otherwise, a brewery license or a retail beer license simultaneously with a wholesaling license.

(b) A retail beer licensee may not be issued, directly or indirectly, nor hold, through any wholly or partially owned subsidiaries or otherwise, a wholesaling license.

(7) The commission may not grant a beer wholesaling license to any person who has not met any applicable federal requirements for beer wholesaling.

(8) If any person to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-11-104. COMMISSION AND DEPARTMENT DUTIES BEFORE ISSUING LICENSES.

(1) Before any beer wholesaling license is issued by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted. The information shall be forwarded to the commission to aid in its determination.

(2) Before issuing any beer wholesaling license, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections 32A-11-102 and 32A-11-103, and that the application is complete;

(b) consider the applicant's ability to manage and operate a beer wholesaling operation, including but not limited to management experience, past wholesaling experience, the brands the applicant intends to wholesale, and the means the applicant intends to use to distribute beer;

(c) consider the physical characteristics of the premises where it is proposed that beer be stored by the applicant, such as location, proximity to transportation, and condition, size, and security of the premises; and

(d) consider any other factors or circumstances it considers necessary.

32A-11-105. BOND.

(1) Each wholesaling licensee shall post a cash or corporate surety bond in the penal sum of \$10,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as a wholesaling licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3) If the surety bond is canceled due to the licensee's negligence, a \$300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the license is in effect. A bond filed by a licensee may be forfeited if the license is finally revoked.

32A-11-106. Operational restrictions.

A person granted a beer wholesaling license, and the employees and management personnel of the beer wholesaling licensee, shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the beer wholesaling license or other disciplinary action taken against individual employees or management personnel of the licensee.

(1) A licensee may not wholesale a beer manufactured within the state by a brewer who is not licensed by the commission as a manufacturing licensee.

(2) A licensee may not wholesale a beer manufactured out of state by a brewer who has not obtained a certificate of approval from the department.

(3) (a) A licensee may not sell or distribute beer to a person within the state except:

(i) a licensed beer retailer;

(ii) a holder of a single event permit issued pursuant to Chapter 7, Single Event Permits; or

(iii) a holder of a temporary special event beer permit issued for a temporary special event pursuant to Chapter 10, Part 3, Temporary Special Event Beer Permits.

(b) A violation of this Subsection (3) is a class A misdemeanor.

(4) (a) A licensee may not sell or distribute a beer to a retailer outside of the geographic area designated on its application, except that if a licensee is temporarily unable to supply retail dealers within its authorized geographical area, the department may grant temporary authority to another licensed wholesaler who distributes the same brand in another area to supply retailers.

(b) A violation of this Subsection (4) is a class B misdemeanor.

(5) (a) A licensee shall own, lease, or otherwise control and maintain a warehouse facility located in this state for the receipt, storage, and further distribution of all beer sold by the licensee to a person within the state.

(b) A licensee may not sell beer to a person in this state, other than the department, unless the beer is first:

(i) physically removed from the vehicle used to transport the beer from the supplier to the licensee; and

(ii) delivered into the actual possession and control of the licensee in its warehouse or other facility.

(6) (a) A beer wholesaling licensee shall maintain accounting and other records and documents as the department may require.

(b) A licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in a book of account or other document of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, the department, or an official or employee of the commission or department, is subject to:

(i) the immediate suspension or revocation of the beer wholesaling license; and

(ii) possible criminal prosecution under Chapter 12, Criminal Offenses.

(7) A licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the beer wholesaling license to a person, whether for monetary gain or not, unless it is done:

(a) in accordance with the commission rules; and

(b) after written consent is given by the commission.

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 11a - Utah Beer Industry Distribution Act

32A-11a-101. TITLE -- LEGISLATIVE INTENT.

(1) This chapter shall be known as the "Utah Beer Industry Distribution Act."

(2)(a) It is the policy of the Legislature to regulate and control the importation, sale, and distribution of beer within the state in the exercise of its powers under the Twenty-first Amendment to the Constitution of the United States and pursuant to the Utah Constitution.

(b) In furtherance of the policy described in Subsection (2)(a), this chapter is enacted to:

(i) promote good faith and fair dealing in the business relationships between suppliers, wholesalers, and retailers of beer; and

(ii) provide for the establishment and maintenance of an orderly system for the distribution of beer in accordance with the laws of the state regulating the sale and distribution of beer to the public.

32A-11a-102. DEFINITIONS.

As used in this chapter:

(1) "AFFECTED PARTY" means a supplier or wholesaler who is a party to a distributorship agreement that a terminating party seeks to terminate or not renew.

(2)(a) "DISTRIBUTORSHIP AGREEMENT" means any written contract, agreement, or arrangement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer manufactured, imported, or distributed by the supplier.

(b) A separate agreement between a supplier and a wholesaler that relates to the relationship between the supplier and the wholesaler or the duties of either of them under a distributorship agreement is considered to be part of the distributorship agreement for purposes of this chapter.

(c) A distributorship agreement may be for a definite or indefinite period.

(3) "GOOD CAUSE" means the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct in accordance with Sections 32A-11a-103 and 32A-11a-104.

(4) "GOOD FAITH" is as defined in Section 70A-2-103.

(5) "RETAILER" means a person subject to license under Chapter 10, Beer Retailer Licenses.

(6) "SALES TERRITORY" means the geographic area of distribution and sale responsibility designated by a distributorship agreement.

(7) "SUPPLIER," notwithstanding Section 32A-1-105, means a brewer or other person who sells beer to a wholesaler for resale in this state.

(8) "TERMINATING PARTY" means a supplier or wholesaler who:

(a) is a party to a distributorship agreement; and

(b) seeks to terminate or not renew the distributorship agreement.

32A-11a-103. TERMINATION OF DISTRIBUTORSHIP AGREEMENTS.

(1) Except as provided in Subsection (2) or (3), a supplier or wholesaler may not:

(a) terminate a distributorship agreement; or

(b) fail to renew a distributorship agreement.

(2) A supplier or wholesaler may take an action prohibited by Section (1) if:

(a) the supplier or wholesaler has good cause for the action; and

(b) if notification is required by Section 32A-11a-104:

(i) the terminating party provides the affected party prior notification in accordance with Section 32A-11a-104; and

(ii) the affected party has not eliminated the reasons specified in the notification as the reasons for the action within 90 days after the date the notification is mailed in accordance with Section 32A-11a-104.

(3) A supplier may terminate or not renew a distributorship agreement if:

(a) the supplier gives the wholesaler 30 days written notice before termination or nonrenewal;

(b) the supplier discontinues production or discontinues distribution throughout the state of all brands of beer sold by the supplier to the wholesaler; and

(c) the termination or nonrenewal does not violate the distributorship agreement.

32A-11a-104. NOTICE OF TERMINATION.

(1) Except as provided in Subsection (3), a terminating party may not take an action described in Subsection 32A-11a-103(1) unless the terminating party provides prior notification in accordance with Subsection (2) to the affected party.

(2) The notification required under Subsection (1) shall:

(a) be in writing;

(b) be mailed by registered mail, return receipt requested, to the affected party not less than 90 days before the date on which the distributorship agreement will be terminated or not renewed;

(c) state the intention to terminate or not renew;

(d) state the reasons for the termination or nonrenewal; and

(e) state the date, not less than 90 days from the date of mailing, on which the termination or nonrenewal shall take effect if the reasons for the action are not eliminated by that date.

(3) A supplier or wholesaler may take an action described in Subsection 32A-11a-103(1) without furnishing any prior notification if:

(a) the affected party is insolvent, bankrupt, in dissolution, or in liquidation;

(b) the affected party makes an assignment for the benefit of creditors or similar disposition of substantially all of the assets of the affected party's business;

(c) the affected party or a person owning more than 10% of the stock or other ownership interest in the affected party:

(i) is convicted of, pleads guilty to, or pleads no contest to a felony under the laws of the United States or this state that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party;

(ii) has its license or permit revoked or suspended for a period of 31 days or more; or

(iii) engages in intentional fraudulent conduct in its dealings with the terminating party that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party.

(4) Subsection (3)(c)(iii) does not apply to conduct by a non-owner employee or representative of the affected party if the conduct occurred without the prior knowledge or consent of an owner of the affected party.

(5) Notwithstanding Subsection (3)(c)(i), a supplier may not take an action under Subsection (3)(c)(i) because of a conviction or plea by an owner of the affected party, if:

(a) any other approved owner of the affected party purchases the ownership interest of the offending owner;

(b) the offending owner was not materially involved in the management of the affected party; and

(c) the purchase described in Subsection (5)(a) is completed within 90 days after the conviction or plea.

32A-11a-105. PROHIBITED CONDUCT OF SUPPLIER.

(1) A supplier may not:

(a) induce, coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct;

(b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the supplier on similarly situated wholesalers;

(c) prohibit a wholesaler from selling the product of any other supplier;

(d) fix or maintain the price at which a wholesaler may resell beer;

(e) fail to execute with each wholesaler of its brands a written distributorship agreement;

(f) require any wholesaler to accept delivery of any beer or any other item that is not voluntarily ordered by the wholesaler;

(g) restrict or inhibit, directly or indirectly, the right of a wholesaler to participate in an organization representing interests of wholesalers for any lawful purpose;

(h) require a wholesaler to participate in or contribute to any local, regional, or national advertising fund or other promotional activity that:

(i) is not used for advertising or promotional activities in the wholesaler's sales territory; or

(ii) would require contributions by the wholesaler in excess of the amounts specified in the distributorship agreement;

(i) retaliate against a wholesaler that files a complaint with the department or the applicable federal agency regarding an alleged violation by the supplier of a state or federal law or administrative rule;

(j) require without good cause any change in the manager of a wholesaler who has previously been approved by the supplier;

(k) if a wholesaler changes its approved manager, prohibit the change unless the new manager fails to meet the reasonable standards for similarly situated wholesalers of the supplier as stated in the distributorship agreement; or

(1) refuse to deliver beer products covered by a distributorship agreement to the wholesaler:

(i) in reasonable quantities; and

(ii) within a reasonable time after receipt of the wholesaler's order.

(2) Notwithstanding Subsection (1)(l), the supplier may refuse to deliver products if the refusal is due to:

(a) the wholesaler's failure to pay the supplier pursuant to the distributorship agreement;

(b) an unforeseeable event beyond the supplier's control;

(c) a work stoppage or delay due to a strike or labor problem;

(d) a bona fide shortage of materials; or

(e) a freight embargo.

32A-11a-106. PROHIBITED CONDUCT OF WHOLESALER.

- (1) A wholesaler may not:
 - (a) induce, coerce, or attempt to induce or coerce, any retailer to engage in any illegal act or course of conduct;
 - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;
 - (c) prohibit a retailer from selling the product of any other wholesaler;
 - (d) fix or maintain the price at which a retailer may resell beer;
 - (e) require any retailer to accept delivery of any beer or any other item that is not voluntarily ordered by the retailer;
 - (f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for any lawful purpose;
 - (g) require a retailer to participate in or contribute to any local, regional, or national advertising fund or other promotional activity;
 - (h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal law or administrative rule; and
 - (i) refuse to deliver beer products carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory:
 - (i) in reasonable quantities; and
 - (ii) within a reasonable time after receipt of the retailer's order.
- (2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver products if the refusal is due to:
 - (a) the retailer's failure to pay the wholesaler pursuant to Subsection 32A-12-603(7);
 - (b) an unforeseeable event beyond the wholesaler's control;
 - (c) a work stoppage or delay due to a strike or labor problem;
 - (d) a bona fide shortage of materials; or
 - (e) a freight embargo.

32A-11a-107. SALE OR TRANSFER OF BUSINESS ASSETS OR OWNERSHIP.

- (1) Without the prior written approval of a sale or transfer by the supplier:
 - (a) a wholesaler may not sell or transfer its business, or any portion of its business, including the distributorship agreement to a successor in interest; and
 - (b) the owner of an interest in a wholesaler may not sell or transfer all or part of the owner's interest in the wholesaler to a successor in interest.
- (2) A supplier may not unreasonably withhold or delay its approval of a sale or transfer, including the wholesaler's rights and obligations under the terms of the distributorship agreement, if the person to be substituted meets reasonable standards that are imposed:
 - (a) by the supplier pursuant to the distributorship agreement; and
 - (b) on other wholesalers of that supplier of the same general class, taking into account the size and location of the sales territory and market to be served.
- (3) Notwithstanding Subsection (1), a wholesaler may not assign or transfer its license in violation of Subsection 32A-11-106(7).

32A-11a-108. Reasonable compensation -- Arbitration.

- (1) If a supplier violates Section **32A-11a-103** or **32A-11a-107**, the supplier shall be liable to the wholesaler for the laid-in cost of inventory of the affected brands plus any diminution in the fair market value of the wholesaler's business with relation to the affected brands. In determining fair market value, consideration shall be given to all elements of value, including good will and going concern value.
- (2) (a) A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration. In the absence of an applicable arbitration provision in the distributorship agreement, either the supplier or the wholesaler may request arbitration if a supplier and a wholesaler are unable

to mutually agree on:

- (i) whether or not good cause exists for termination or nonrenewal;
 - (ii) whether or not the supplier unreasonably withheld approval of a sale or transfer under Section **32A-11a-107**; or
 - (iii) the reasonable compensation to be paid for the value of the wholesaler's business in accordance with Subsection (1).
- (b) If a supplier or wholesaler requests arbitration under Subsection (2)(a) and the other party agrees to submit the matter to arbitration, an arbitration panel shall be created with the following members:
- (i) one member selected by the supplier in a writing delivered to the wholesaler within ten business days of the date arbitration was requested under Subsection (2)(a);
 - (ii) one member selected by the wholesaler in a writing delivered to the supplier within ten business days of the date arbitration was requested under Subsection (2)(a); and
 - (iii) one member selected by the two arbitrators appointed under Subsections (2)(b)(i) and (ii).
- (c) If the arbitrators selected under Subsection (2)(b)(iii) fail to choose a third arbitrator within ten business days of their selection, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator.
- (d) Arbitration costs shall be divided equally between the wholesaler and the supplier.
- (e) The award of the arbitration panel is binding on the parties unless appealed within 20 days from the date of the award.
- (f) Subject to the requirements of this chapter, arbitration and all proceedings on appeal shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

32A-11a-109. SALE OR TRANSFER OF SUPPLIER'S BUSINESS.

- (1)(a) A successor to a supplier that after July 1, 1998, acquires a supplier's products or brands in this state shall be bound by all of the terms and conditions of each distributorship agreement with a wholesaler in this state that was in effect on the date on which the successor received the assets or rights of the previous supplier.
- (b) Notwithstanding Subsection (1)(a), a successor may contractually require its wholesalers to:
- (i) execute a new distributorship agreement; and
 - (ii) comply with the successor's operational standards of performance if:
 - (A) the operational standards of performance are consistent with this chapter;
 - (B) the operational standards of performance are uniformly imposed by the successor on similarly situated wholesalers; and
 - (C) the successor provides the wholesaler at least one year to:
 - (I) execute a new distributorship agreement; and
 - (II) comply with the operational standards of performance.
- (2) (a) For purposes of this section, "successor" means a supplier who obtains the distribution rights of a brand that a wholesaler distributes in this state pursuant to a distributorship agreement with another supplier who previously had the distribution rights of the brand.
- (b) For purposes of Subsection (2)(a), the successor may obtain the distribution right:
- (i) by any means, including:
 - (A) merger;
 - (B) purchase of corporate shares; or
 - (C) purchase of assets; and
 - (ii) from:
 - (A) a supplier; or
 - (B) a person acting in an official capacity who is not a supplier including a nominee, representative, or fiduciary.

32A-11a-110. JUDICIAL REMEDIES.

(1) A supplier or wholesaler who is a party to a distributorship agreement may maintain a civil action against the supplier or wholesaler in a court of competent jurisdiction in the county in which the wholesaler's principal place of business is located if:

(a) the supplier or wholesaler violates this chapter; or

(b)(i) the supplier and wholesaler are not able to mutually agree on reasonable compensation under Section 32A-11a-108; and

(ii) the parties do not agree to submit the matter to arbitration in accordance with Section 32A-11a-108 prior to or within 20 days following service of process on the electing party in the civil action.

(2)(a) The prevailing party in any action under Subsection (1) shall recover:

(i) actual damages, including the value of the wholesaler's business as specified in Section 32A-11a-108 if applicable; and

(ii) reasonable attorneys' fees and court costs.

(b) In addition to the amount awarded under Subsection (2)(a), the court may grant such relief in law or equity as the court determines to be necessary or appropriate considering the purposes of this chapter.

(3) If either party elects arbitration under Subsection (1)(b)(ii) following service of process, the civil action is stayed pending a decision by the arbitration panel.

32A-11a-111. MODIFYING STATUTORY REQUIREMENTS NOT PERMITTED.

(1) Nothing in this chapter is intended to restrict the right of a supplier to contractually require its wholesaler to comply with the supplier's operational standards of performance that are:

(a) consistent with this chapter; and

(b) uniformly established for its wholesalers according to the supplier's good faith business judgment.

(2) Notwithstanding Subsection (1), the requirements of this chapter may not be modified by agreement.

(3) Any agreement that by its terms modifies the requirements of this chapter is void and unenforceable to the extent it attempts to modify the requirements of this chapter.

R81. Alcoholic Beverage Control, Administration.

R81-11. Beer Wholesalers.

R81-11-1. Application.

An application for a beer wholesaler license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer wholesaler license when the requirements of Section 32A-11-102, -103 and -105 have been met, and a completed application has been received by the department.

R81-11-2. Transfer of License.

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

R81-11-3. Conditions of Transfer.

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32A-11-102, and -103.

R81-11-4. Change of Trade Name.

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

R81-11-5. Change in Partners.

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

Date of Enactment or Last Substantive Amendment: 1994

Notice of Continuation: August 24, 2006

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2007)

Chapter 12 - Criminal Offenses

PART 1

GENERAL PROVISIONS

32A-12-101. UTAH CRIMINAL CODE APPLICABLE.

Title 76, Chapters 1, 2, 3, and 4, the Utah Criminal Code, relating to principles of construction, jurisdiction, venue, limitations of actions, multiple prosecutions, double jeopardy, burdens of proof, definitions, principles of criminal responsibility, punishments, and inchoate offenses apply to any criminal offense defined in this title, except as otherwise provided.

32A-12-102. SPECIAL BURDENS OF PROOF -- INFERENCES AND PRESUMPTIONS.

(1) In any prosecution of an offense defined in this title or in any proceeding brought to enforce this title:

(a) it is not necessary that the state or commission establish the precise description or quantity of the alcoholic beverages or products or the precise consideration, if any, given or received for the alcoholic beverages or products;

(b) there is an inference, absent proof to the contrary, that the alcoholic beverage or product in question is an alcoholic beverage or product if the witness describes it:

(i) as an alcoholic beverage or product;

(ii) by a name that is commonly applied to an alcoholic beverage or product; or

(iii) as intoxicating;

(c) if it is alleged that an association or corporation has violated this title, the fact of the incorporation of the association or corporation is presumed absent proof to the contrary;

(d) a certificate or report signed or purporting to be signed by any state chemist, assistant state chemist, or state crime laboratory chemist, as to the analysis or ingredients of any alcoholic beverage or product is:

(i) prima facie evidence:

(A) of the facts stated in that certificate or report; and

(B) of the authority of the person giving or making the report; and

(ii) admissible in evidence without any proof of appointment or signature absent proof to the contrary; and

(e) a copy of entries made in the records of the United States internal revenue collector, certified by the collector or a qualified notary public, showing the payment of the United States internal revenue special tax for the manufacture or sale of alcoholic beverages or products is prima facie evidence of the manufacture or sale by the party named in the entry within the period set forth in the record.

(2)(a) In proving the unlawful sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of alcoholic beverages or products, it is not necessary that the state or commission establish that any money or other consideration actually passed or that an alcoholic beverage or product was actually consumed if the court or trier of fact is satisfied that:

(i) a transaction in the nature of a sale, disposal, gift, or purchase actually occurred; or

(ii) any consumption of alcoholic beverages or products was about to occur.

(b) Proof of consumption or intended consumption of an alcoholic beverage or product on premises on which consumption is prohibited, by some person not authorized to consume alcoholic beverages or products on those premises, is evidence that an alcoholic beverage or product was sold or given to or purchased by the person consuming, about to consume, or carrying away the alcoholic beverage or product as against the occupant of the premises.

32A-12-103. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER.

In addition to Title 76, Chapter 2, Part 2, Criminal Responsibility for the Conduct of Another, the following principles apply to violations of this title:

(1) If a violation of this title is committed by any person in the employ of the occupant of any premises in which the offense is committed, or by any person who is required by the occupant to be or remain in or upon the premises, or to act in any way for the occupant, the occupant is prima facie considered a party to the offense committed, and is liable as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section relieves the person actually committing the offense from liability.

(2) If a violation of this title is committed by a corporation, association, partnership, or limited liability company, the officer or agent of the corporation or association, partner, manager, or member of the limited liability company in charge of the premises in which the offense is committed is prima facie considered a party to the offense committed, and is personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section relieves the corporation, association, partnership, or limited liability company, or the person who actually committed the offense from liability.

32A-12-104. VIOLATION OF TITLE A MISDEMEANOR.

Any person who violates this title or the commission rules adopted under this title is guilty of a class B misdemeanor, unless otherwise provided in this title.

32A-12-105. ADDITIONAL CRIMINAL PENALTIES.

In addition to the penalties provided in Title 76, Chapter 3, Penalties:

(1) Upon any defendant's conviction of any offense defined in this title, the court may also order the defendant to make restitution or pay costs in accordance with Title 77, Chapter 32A, Defense Costs.

(2)(a) Upon a corporation's, association's, partnership's, or limited liability company's conviction of any offense defined in this title, and a failure of the corporation, partnership, association, or limited liability company to pay a fine imposed upon it, the powers, rights, and privileges of the corporation, association, partnership, or limited liability company, if it is a domestic corporation, association, partnership, or limited liability company may be suspended or revoked, and if a foreign corporation, association, partnership, or limited liability company, it forfeits its right to do intrastate business in this state.

(b) The department shall transmit the name of each corporation, association, partnership, or limited liability company to the Division of Corporations and Commercial Code, which shall immediately record the action in a manner that makes the information available to the public. The suspension, revocation, or forfeiture is effective from the time the record is made, and the certificate of the Division of Corporations and Commercial Code is prima facie evidence of the suspension, revocation, or forfeiture. Nothing contained in this section may be construed as affecting, limiting, or restricting any proceedings that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.

(3) Upon the conviction of any business entity required to have a business license to operate its business activities, or upon the conviction of any of its agents, employees, or officers of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business licenses. That governmental entity may institute appropriate proceedings to revoke the business' license, and upon revocation, a license may not be granted to the business entity for at least one year from the date of revocation. Upon the conviction for a second or other offense, a license may not be granted for at least two years from the date of revocation.

(4) Upon conviction of any physician, pharmacist, druggist, dentist, or veterinarian of any offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of Occupational and Professional Licensing. That department may institute appropriate proceedings to revoke the defendant's license, and upon revocation, a license may not be granted to the defendant by the department for at least one year from the date of revocation. Upon the defendant's conviction for a second or other offense, a license may not be granted for at least two years from the date of revocation.

PART 2
SALES, PURCHASE, POSSESSION, AND CONSUMPTION

32A-12-201. UNLAWFUL SALE OR FURNISHING.

(1) It is unlawful for any person in the business of selling liquor, or any manufacturer, supplier, or importer of liquor, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (a) the department;
- (b) a military installation;
- (c) a holder of a special use permit to the extent authorized by the commission in the permit; or
- (d) a bonded liquor warehouse licensed by the commission to distribute and transport liquor to:
 - (i) the department; or
 - (ii) an out-of-state wholesaler or retailer.

(2)(a) It is unlawful for any person in the business of selling beer, or any manufacturer, supplier, or importer of beer, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (i) a licensed beer wholesaler;
- (ii) a military installation; or
- (iii) a holder of a special use permit to the extent authorized by the commission in the permit.

(b) Subsection (2)(a) does not preclude a small brewer that holds a certificate of approval under Subsection 32A-8-101(4) from selling, shipping, or transporting beer directly to a licensed beer retailer to the extent authorized by Subsection 32A-8-401(5).

(3)(a) It is unlawful for any manufacturer, supplier, or importer of liquor in this state, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any liquor directly or indirectly to any person in this state except to the extent authorized by this title to:

- (i) the department;
- (ii) a military installation;
- (iii) a holder of a special use permit to the extent authorized by the commission in the permit; or
- (iv) a bonded liquor warehouse licensed by the commission to distribute and transport liquor to:
 - (A) the department; or
 - (B) an out-of-state wholesaler or retailer.

(b) Subsection (3)(a) does not preclude a winery licensed under this title and located in this state from selling wine to persons on its winery premises:

- (i) to the extent authorized by Subsection 32A-8-201(4)(c); or
- (ii) under a package agency established by the commission on the winery premises.

(4)(a) It is unlawful for any manufacturer, supplier, or importer of beer in this state, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any beer directly or indirectly to any person in this state except to the extent authorized by this title to:

- (i) a licensed beer wholesaler;
- (ii) a military installation; or
- (iii) a holder of a special use permit to the extent authorized by the commission in the permit.

(b) Subsection (4)(a) does not preclude:

(i) a small brewer licensed under this title and located in this state from selling, shipping, and transporting beer directly to a licensed beer retailer in this state to the extent authorized by Subsection 32A-8-401(5); or

(ii) a brewer licensed under this title from selling beer to persons on its manufacturing premises under Subsection 32A-8-401(4)(c).

(5) It is unlawful for any person other than a person described in Subsection (1) or (2) to sell, ship, transport, or cause to be sold, shipped, or transported any alcoholic beverage or product from an out-of-state

location directly or indirectly into this state, except as otherwise provided by this title.

(6) It is unlawful for any person in this state other than a person described in Subsection (3) or (4) to sell, ship, transport, or cause to be sold, shipped, or transported any alcoholic beverage or product directly or indirectly to any other person in this state, except as otherwise provided by this title.

(7) It is unlawful for any retail licensee or permittee in this state, or their officers, managers, employees, or agents to keep for sale, or to directly or indirectly, sell, offer to sell, or otherwise furnish to another, any alcoholic beverage or product, except as otherwise provided by this title.

(8)(a) A violation of Subsection (1), (2), (3), or (4) is a third degree felony.

(b) A violation of Subsection (5) or (6) is a class B misdemeanor.

(c) A violation of Subsection (7) is a class B misdemeanor, except where otherwise provided by this title.

32A-12-202. UNAUTHORIZED SALE OR SUPPLY.

A person authorized by this title to sell any alcoholic beverage or product, and an officer, manager, employee, or agent of that person may not sell, offer to sell, or otherwise furnish or supply, any alcoholic beverage or product in any place, or at any day or time other than as authorized by this title or the rules of the commission.

32A-12-203. UNLAWFUL SALE OR FURNISHING TO MINORS.

(1) A person may not sell, offer to sell, or otherwise furnish any alcoholic beverage or product to any minor.

(2)(a) Except as otherwise provided in Subsection (4), a person is guilty of a class B misdemeanor if that person:

(i) sells, offers to sell, or otherwise furnishes any alcoholic beverage or product to any minor; and

(ii) negligently or recklessly fails to determine whether the recipient of the alcoholic beverage or product is a minor.

(b) As used in this Subsection (2), "negligently" means with simple negligence.

(3) Except as otherwise provided in Subsection (4), a person who sells, offers to sell, or otherwise furnishes any alcoholic beverage or product to any minor knowing that the recipient of the alcoholic beverage or product is a minor is guilty of a class A misdemeanor.

(4) This section does not apply to the furnishing of an alcoholic beverage or product to a minor in accordance with this title:

(a) for medicinal purposes by:

(i) the parent or guardian of the minor; or

(ii) the minor's physician or dentist; or

(b) as part of a church's or religious organization's religious services.

32A-12-204. UNLAWFUL SALE OR FURNISHING TO INTOXICATED PERSONS.

(1) A person may not sell, offer to sell, or otherwise furnish any alcoholic beverage or product to:

(a) any person who is actually or apparently intoxicated; or

(b) a person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was actually or apparently intoxicated.

(2)(a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.

(b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.

(3) As used in Subsection (2)(a), "negligently" means with simple negligence.

32A-12-205. UNLAWFUL SALE OR SUPPLY TO INTERDICTED PERSONS.

(1) A person may not sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or product to any known interdicted person.

(2) This section does not apply to the furnishing or supplying of an alcoholic beverage or product to an interdicted person upon the prescription of a physician, or administered by a physician, dentist, or hospital under this title.

32A-12-206. UNLAWFUL SALE OR SUPPLY OF BEER.

(1) A person may not sell, offer to sell, or otherwise furnish or supply beer to the general public in containers larger than two liters. This does not preclude licensed beer wholesalers from selling, offering to sell, or otherwise furnishing or supplying beer in containers larger than two liters to beer retailers authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises.

(2) A person may not purchase or possess beer in containers larger than two liters unless the person is a beer retailer authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises.

32A-12-207. UNLAWFUL SALE OR FURNISHING DURING EMERGENCY.

During a period of emergency proclaimed by the governor to exist in an area of the state, it is unlawful for a person to sell, offer to sell, or otherwise furnish any alcoholic product in that area if the director of the department has publicly announced and directed that alcoholic products may not be sold, offered for sale, or otherwise furnished in that area during the period of emergency.

32A-12-208. UNLAWFUL PURCHASE OR ACCEPTANCE.

It is unlawful for any person, or the person's officer, manager, employee, or agent, directly or indirectly or upon any pretense or device, to purchase, take, or accept any alcoholic beverage or product from any other person, except as provided by this title or the rules of the commission adopted under this title.

32A-12-209. Unlawful purchase, possession, consumption by minors -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for any minor to:

- (a) purchase any alcoholic beverage or product;
- (b) attempt to purchase any alcoholic beverage or product;
- (c) solicit another person to purchase any alcoholic beverage or product;
- (d) possess any alcoholic beverage or product;
- (e) consume any alcoholic beverage or product; or
- (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic beverage or product for a minor for:

- (a) any minor to misrepresent the minor's age; or
- (b) any other person to misrepresent the age of a minor.

(3) It is unlawful for a minor to possess or consume any alcoholic beverage while riding in a limousine or chartered bus.

(4) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section:

(a) if the violation is the minor's first violation of this section, the court may suspend the minor's driving privileges; or

(b) if the violation is the minor's second or subsequent violation of this section, the court shall suspend the minor's driving privileges.

(5) When a minor who is at least 13 years old, but younger than 18 years old, is found by the court to have violated this section, the provisions regarding suspension of the driver's license under Section **78A-6-606** apply to the violation.

(6) When the court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section **53-3-219**.

(7) When the Department of Public Safety receives the arrest or conviction record of a person for a driving

offense committed while the person's license is suspended pursuant to this section, the department shall extend the suspension for an additional like period of time.

(8) This section does not apply to a minor's consumption of an alcoholic beverage or product in accordance with this title:

- (a) for medicinal purposes if the alcoholic beverage or product is furnished by:
 - (i) the parent or guardian of the minor; or
 - (ii) the minor's physician or dentist; or
- (b) as part of a church's or religious organization's religious services.

32A-12-209.5. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

- (a) a tavern; or
- (b) a class D private club, except to the extent authorized by Subsection **32A-5-107(8)**.
- (2) A minor who violates this section is guilty of a class C misdemeanor.

(3) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section:

(a) if the violation is the minor's first violation of this section, the court may suspend the minor's driving privileges; or

(b) if the violation is the minor's second or subsequent violation of this section, the court shall suspend the minor's driving privileges.

(4) When a minor who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section **78A-6-606** apply to the violation.

(5) When the court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section **53-3-219**.

(6) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the department shall extend the suspension for an additional like period of time.

32A-12-210. UNLAWFUL PURCHASE BY INTOXICATED PERSONS.

A person may not purchase any alcoholic beverage or product when the person is intoxicated.

32A-12-211. UNLAWFUL PURCHASE BY INTERDICTED PERSONS.

A person may not purchase or possess any alcoholic beverage or product if he is an interdicted person, except as prescribed or administered by a physician, dentist, or hospital under this title.

32A-12-212. Unlawful possession -- Exceptions.

(1) A person may not have or possess within this state any liquor unless authorized by this title or the rules of the commission, except that:

(a) a person who clears United States Customs when entering this country may have or possess for personal consumption and not for sale or resale, a maximum of two liters of liquor purchased from without the United States;

(b) a person who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move, if:

- (i) the person first obtains department approval before moving the liquor into the state;
- (ii) the department affixes the official state label to the liquor; and
- (iii) the person pays the department a reasonable administrative handling fee as determined by the commission;

(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if:

(i) the person first obtains department approval before moving the liquor into the state;

(ii) the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary;

(iii) the department affixes the official state label to the liquor; and

(iv) the person pays the department a reasonable administrative handling fee as determined by the commission; or

(d) a person may transport, have, or possess liquor if:

(i) the person transports, has, or possesses the liquor:

(A) for personal household use and consumption; and

(B) not for:

(I) sale;

(II) resale;

(III) gifting to another; or

(IV) consumption on a premise licensed by the commission;

(ii) the liquor is purchased from a store or outlet on a military installation; and

(iii) the maximum amount the person transports, has, or possesses under this Subsection (1)(d) is:

(A) two liters of:

(I) spirituous liquor;

(II) wine; or

(III) a combination of spirituous liquor and wine; and

(B) (I) one case of heavy beer that does not exceed 288 ounces; or

(II) on or after October 1, 2008, one case of a flavored malt beverage that does not exceed 288 ounces.

(2) (a) Approval under Subsection (1)(b) may be obtained by a person who:

(i) is transferring the person's permanent residence to this state; or

(ii) maintains separate residences both in and out of this state.

(b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more than once.

32A-12-213. UNLAWFUL BRINGING ONTO PREMISES FOR CONSUMPTION.

(1) Except as provided in Subsection (3), a person may not bring for on-premise consumption any alcoholic beverage onto the premises of any:

(a) licensed or unlicensed restaurant;

(b) licensed or unlicensed private club;

(c) airport lounge licensee;

(d) on-premise banquet licensee;

(e) on-premise beer retailer licensee;

(f) event where alcoholic beverages are sold or served under a single event permit or temporary special event beer permit issued under this title; or

(g) any establishment open to the general public.

(2) Except as provided in Subsection (3), a licensed or unlicensed restaurant or private club, airport lounge licensee, on-premise banquet licensee, on-premise beer retailer licensee, or holder of a single event permit or temporary special event beer permit issued under this title, or its officers, managers, employees, or agents may not allow a person to bring onto its premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage in violation of this section.

(3)(a) A person may bring bottled wine onto the premises of any restaurant liquor licensee, limited restaurant licensee, or private club licensee and consume the wine pursuant to the applicable restrictions contained in Subsection 32A-4-106(14), 32A-4-307(14), or 32A-5-107(31);

(b) a passenger of a limousine may bring onto, have, and consume any alcoholic beverage on the

limousine if:

(i) the travel of the limousine begins and ends at:

(A) the residence of the passenger;

(B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(C) the temporary domicile of the passenger; and

(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department;

(c) a passenger of a chartered bus may bring onto, have, and consume any alcoholic beverage on the chartered bus:

(i)(A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or

(B) if the travel of the chartered bus begins and ends at:

(I) the residence of the passenger;

(II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(III) the temporary domicile of the passenger; and

(ii) the chartered bus has a non-drinking designee other than the driver traveling on the chartered bus to monitor consumption; and

(d) a person may bring onto any premises, have, and consume any alcoholic beverage at a privately hosted event that is not open to the general public.

(4) Except as provided in Subsection (3)(c)(i)(A), the consumption of alcoholic beverages in limousines and chartered buses is not allowed if the limousine or chartered bus drops off passengers at locations from which they depart in private vehicles.

32A-12-214. UNLAWFUL POSSESSION BY LICENSEES OR PERMITTEES.

A licensee or permittee of the commission may not have, possess, store, or allow consumption on its premises any liquor not purchased from the department, a state store, or a package agency, except as authorized by Section 32A-12-213, other provisions of this title, or the rules of the commission.

32A-12-215. UNLAWFUL STORAGE.

It is unlawful for any person to store liquor in any establishment that is authorized to sell beer for on-premise consumption but is not licensed by the commission to sell liquor.

32A-12-216. UNLAWFUL PERMITTING OF INTOXICATION.

(1) A person may not permit any other person to become intoxicated or any intoxicated person to consume any alcoholic beverage in:

(a) any premises of which the person is the owner, tenant, or occupant; or

(b) in any chartered bus or limousine of which the person is the owner or operator.

(2) A violation of Subsection (1) is a class C misdemeanor.

32A-12-217. UNLAWFUL PERMITTING OF CONSUMPTION BY MINORS.

(1) A person may not permit any minor to consume any alcoholic beverage in any chartered bus or limousine of which the person is the owner or operator.

(2) A violation of Subsection (1) is an infraction.

32A-12-218. UNLAWFUL LABELING OR LACK OF LABEL.

(1) Unless otherwise provided by this title or the rules of the commission, it is unlawful for any person to possess any liquor unless:

(a) the liquor is contained in its original package; and

(b) the package has affixed to it the official commission label and markings as required by this title and the rules of the commission.

(2) Unless authorized by the department, it is unlawful for any person to be in possession of or use an official commission label, marking, or equipment that is used by the department, a state store, or a package agency to label or mark original liquor bottles or packages.

(3) A violation of Subsection (2) is a third degree felony.

32A-12-219. UNLAWFUL ADULTERATION.

A person may not, for any purpose, mix or allow to be mixed any drug, methylic alcohol, any crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid with an alcoholic beverage sold or supplied by the person as a beverage.

32A-12-220. UNLAWFUL CONSUMPTION IN PUBLIC PLACES.

(1) A person may not consume liquor in a public building, park, or stadium, except as provided by this title.

(2) A violation of this section is a class C misdemeanor.

32A-12-221. LAWFUL DETENTION.

(1)(a) For the purpose of informing a peace officer of a suspected violation and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:

(i) detain a person; and

(ii) hold any form of identification presented by the person.

(b) The following may take an action described in Subsection (1)(a):

(i) a state store employee;

(ii) a package agent;

(iii) a licensee or permittee under this title;

(iv) a beer retailer; or

(v) an employee of a person described in Subsections (1)(b)(i) through (iv).

(c) A person described in Subsection (1)(b) may take an action described in Subsection (1)(a) only:

(i) if that person has reason to believe that the person against whom the action is taken is:

(A) in a facility where liquor or beer is sold; and

(B) in violation of Section 32A-12-209, 32A-12-210, or 32A-12-211; and

(ii)(A) in a reasonable manner; and

(B) for a reasonable length of time.

(2) Unless the detention is unreasonable under all circumstances, the detention or failure to detain does not create criminal or civil liability for:

(a) false arrest;

(b) false imprisonment;

(c) slander; or

(d) unlawful detention.

32A-12-222. Unlawful dispensing.

(1) For purposes of this section:

(a) "primary spirituous liquor" means the main distilled spirit in a beverage; and

(b) "primary spirituous liquor" does not include a secondary alcoholic product used as a flavoring in conjunction with the primary distilled spirit in the beverage.

(2) A licensee licensed under this title to sell, serve, or otherwise furnish spirituous liquor for consumption on the licensed premises, or an officer, manager, employee, or agent of the licensee may not:

(a) sell, serve, dispense, or otherwise furnish a primary spirituous liquor to a person on the licensed premises

except in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department;

(b) sell, serve, dispense, or otherwise furnish more than a total of 2.5 ounces of spirituous liquor per beverage;

(c) allow any person on the licensed premises to have more than a total of 2.5 ounces of spirituous liquor at a time;

(d) allow any person on the premises of the following to have more than one spirituous liquor beverage at a time:

(i) a restaurant liquor licensee;

(ii) an on-premise banquet licensee; or

(iii) a single event permittee; or

(e) allow any person to have more than two spirituous liquor beverages at a time in violation of:

(i) Subsection **32A-4-206(2)(d)**; or

(ii) Subsection **32A-5-107(20)(d)**.

(3) A violation of this section is a class C misdemeanor.

PART 3 OPERATIONS

32A-12-301. Operating without a license or permit.

(1) A person may not operate the following businesses without first obtaining a license under this title if the business allows a patron, customer, member, guest, visitor, or other person to purchase or consume an alcoholic beverage on the premises of the business:

(a) a restaurant;

(b) an airport lounge;

(c) a private club;

(d) an on-premise beer retailer outlet;

(e) on-premise banquet premises; or

(f) a business similar to one listed in Subsections (1)(a) through (e).

(2) A person conducting an event or function that is open to the general public may not directly or indirectly sell, offer to sell, or otherwise furnish an alcoholic beverage to a person attending the event or function without first obtaining a permit under this title.

(3) A person conducting a privately hosted event or private social function may not directly or indirectly sell or offer to sell an alcoholic beverage to a person attending the privately hosted event or private social function without first obtaining a permit under this title.

(4) A person may not operate the following businesses without first obtaining a license under this title:

(a) a winery manufacturer;

(b) a distillery manufacturer;

(c) a brewery manufacturer;

(d) a local industry representative of:

(i) a manufacturer of an alcoholic beverage;

(ii) a supplier of an alcoholic beverage; or

(iii) an importer of an alcoholic beverage;

(e) a liquor warehouser; or

(f) a beer wholesaler.

(5) A person may not operate a public conveyance in this state without first obtaining a public service permit under this title if that public conveyance allows a person to purchase or consume an alcoholic beverage or alcoholic product:

(a) on the public conveyance; or

(b) on the premises of a hospitality room located with a depot, terminal, or similar facility at which a service is provided to a patron of the public conveyance.

32A-12-302. STORING OR POSSESSING PURSUANT TO FEDERAL STAMP.

(1) It is unlawful for any person, not acting for or licensed by the commission, who holds a stamp issued by the Bureau of Internal Revenue of the United States as a retail dealer in fermented malt liquor, or the person's operators or employees, to have, hold, store, or possess liquor in or on premises described in the stamp while the stamp remains in effect, except as otherwise provided by statute.

(2) Nothing in this section may be construed to prevent persons other than the owner or operator, or employees of either, from possessing and consuming, but not storing, liquor on premises described by the fermented malt liquor stamp.

32A-12-303. TAMPERING WITH RECORDS.

(1) Any official or employee of the commission or the department who has custody of any writing or record required to be filed or deposited with the commission or the department under this title, and who steals, falsifies, alters, willfully destroys, mutilates, defaces, removes, or conceals in whole or in part that writing or record, or who knowingly permits any other person to do so, is guilty of a third degree felony.

(2) Any person not an official or employee of the commission or the department who commits any of the acts specified in Subsection (1) is guilty of a class B misdemeanor.

32A-12-304. MAKING FALSE STATEMENTS.

(1)(a) Any person who makes any false material statement under oath or affirmation in any official proceeding before the commission or the department is guilty of a second degree felony.

(b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.

(2) A person is guilty of a class B misdemeanor if that person knowingly:

(a) makes a false statement under oath or affirmation in any official proceeding before the commission or the department;

(b) makes a false statement with a purpose to mislead a public servant in performing that servant's official functions under this title;

(c) makes a false statement and the statement is required by this title to be sworn or affirmed before a notary or other person authorized to administer oaths;

(d) makes a false written statement on or pursuant to any application, form, affidavit, or document required by this title;

(e) creates a false impression in a written application, form, affidavit, or document required by this title by omitting information necessary to prevent statements in them from being misleading;

(f) makes a false written statement with intent to deceive a public servant in the performance of that servant's official functions under this title; or

(g) submits or invites reliance on any writing or document required under this title which he knows to be lacking in authenticity.

(3) A person is not guilty under Subsection (2) if that person retracts the falsification before it becomes apparent that the falsification was or would be exposed.

32A-12-305. OBSTRUCTING AN OFFICER MAKING A SEARCH OR AN OFFICIAL PROCEEDING OR INVESTIGATION.

(1) A person in or having charge of any premises may not refuse or fail to admit to the premises or obstruct the entry of any member of the commission, authorized representative of the commission or department, or any law enforcement officer who demands entry when acting under this title.

(2) A person in or having charge of any premises may not interfere with any of the following who is conducting an investigation under this title at the premises:

- (a) a member of the commission;
- (b) an authorized representative of the commission or department; or
- (c) any law enforcement officer.

(3) A person is guilty of a second degree felony if, believing that an official proceeding or investigation is pending or about to be instituted under this title, that person:

- (a) alters, destroys, conceals, or removes any writing or record with a purpose to impair its verity or availability in the proceeding or investigation; or
- (b) makes, presents, or uses anything that the person knows to be false with a purpose to deceive any commissioner, department official or employee, law enforcement official, or other person who may be engaged in a proceeding or investigation under this title.

32A-12-306. CONFLICTING INTERESTS.

(1) A member of the commission, the department director, or any employee of the department may not be directly or indirectly interested or engaged in any other business or undertaking dealing in alcoholic products, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for the member's own benefit or in a fiduciary capacity for some other person or entity.

(2) A member of the commission, the department director, or any employee of the department may not enter into or participate in any business transaction as a partner, co-owner, joint venturer, or shareholder with any agent, representative, employee, or officer of any supplier of alcoholic products to the department.

(3) The following are governed by Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act:

- (a) a member of the commission;
- (b) the department director; or
- (c) any employee of the department.

(4) This section does not prevent the purchase of alcoholic products by any commission member, the department director, or any employee of the department as authorized by this title.

32A-12-307. Interfering with suppliers.

(1) Except as provided in Subsection (2), a member of the commission, the director, or an employee of the department may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of an agent, representative, employee, or officer of a manufacturer, supplier, or importer of liquor to the department including a manufacturer, supplier, or importer of:

- (a) wine;
- (b) heavy beer; or
- (c) on or after October 1, 2008, a flavored malt beverage.

(2) A person described in Subsection (1) may participate in the appointment, employment, or termination of appointment or employment to determine qualifications for licensing under Chapter 8, Part 5, Local Industry Representative Licenses, and to enforce compliance with this title.

32A-12-308. OFFERING OR SOLICITING BRIBES OR GIFTS.

(1) A person having sold, selling, or offering any alcoholic product for sale to the commission or department may not offer, make, tender, or in any way deliver or transfer any bribe, gift as defined in Section 67-16-5, or share of profits to:

- (a) any commissioner;
- (b) the department director;
- (c) any department employee; or
- (d) any law enforcement officer responsible for the enforcement of this title.

(2) A commissioner, the department director, any department employee, or any law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any commission, compensation as defined in Section 67-16-3, gift as defined in Section 67-16-5, or loan whatsoever from any person, association, or corporation having sold, selling, or offering any alcoholic product for sale.

(3) A violation of this section is punishable under the provisions of Section 67-16-12.

32A-12-309. ORGANIZING FOR PECUNIARY PROFIT. [Repealed 2003]

32A-12-310. FORGERY.

(1)(a) Any person, with a purpose to defraud the commission or the department or with knowledge that he is facilitating a fraud to be perpetrated by anyone, who forges any writing required under this title, is guilty of forgery as provided under Section 76-6-501.

(b) A violation of Subsection (1)(a) is a second degree felony.

(2) Any person, with intent to defraud the commission or the department, who knowingly possesses any writing that is a forgery as defined in Section 76-6-501, is guilty of a third degree felony.

PART 4 ADVERTISING AND SOLICITING

32A-12-401. Advertising prohibited -- Exceptions.

(1) (a) The advertising of liquor by the department is prohibited, except:

(i) the department may provide for an appropriate sign in the window or on the front of a state store or package agency denoting that it is a state authorized liquor outlet;

(ii) the department or a package agency may provide printed price lists to the public;

(iii) the department may authorize the use of price posting and floor stacking of liquor within state stores;

(iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and

(v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.

(b) Any listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.

(2) (a) The department may not advertise alcoholic beverages on billboards.

(b) A package agency may not advertise alcoholic beverages on billboards except to the extent allowed by the commission by rule.

(3) (a) The department may not display liquor or price lists in windows or showcases visible to passersby.

(b) A package agency may not display liquor or price lists in windows or showcases visible to passersby except to the extent allowed by the commission by rule.

(4) Except to the extent prohibited by this title, the advertising of alcoholic beverages is allowed under guidelines established by the commission by rule.

(5) The advertising or use of any means or media to offer alcoholic beverages to the general public without charge is prohibited.

PART 5 TRANSPORTATION AND DISTRIBUTION

32A-12-501. DISPOSITION OF LIQUOR ITEMS SHIPPED TO THE DEPARTMENT.

(1) Any liquor item received by the department from a supplier as a sample or as an item not specifically listed on a department purchase order shall be handled in accordance with and subject to Subsection

32A-12-603(4)(c)(ix).

- (2) Funds of the department may not be used to pay freight or charges on a sample or any liquor item:
 - (a) shipped to the department by suppliers; and
 - (b) not listed on a department purchase order.

32A-12-502. UNLAWFUL REMOVAL FROM CONVEYANCE OR DIVERSION OF SHIPMENTS.

(1) It is unlawful for any motor carrier or other person transporting any alcoholic product in interstate or other commerce intended for, or consigned to, or claimed to be intended for or consigned to any person without this state, to remove or to permit any person to remove the alcoholic product or any part of the alcoholic product from the conveyance in which it is carried while within this state.

(2) Removal from the conveyance may be allowed if a motor carrier or other person notifies the department in writing at least 24 hours before the intended removal and complies with the instructions given by the department. The department shall, upon receiving this notice or a notice under Subsection (4), take precautions as necessary to ensure compliance with the laws of this state relating to alcoholic products.

(3) It is unlawful for any person to receive for storage or other purpose, or to possess any alcoholic product that has been removed from a car or other conveyance in violation of this section.

(4) It is unlawful for any motor carrier, or any other person, to divert to any place within this state, or to deliver to any person in this state, any alcoholic product that has been consigned for shipment to any place without this state, unless the carrier or other person first notifies the department in writing at least 24 hours before the intended diversion or delivery, and complies with the instructions given by the department.

32A-12-503. UNLAWFUL IMPORTATIONS. *[Repealed 2003]*

32A-12-504. UNLAWFUL TRANSPORTATION.

It is unlawful for any person, including a motor carrier, or any officer, agent, or employee of a motor carrier, to order or purchase any alcoholic product or to cause any alcoholic product to be shipped, carried, or transported into this state, or from one place to another within this state except as otherwise authorized by this title.

32A-12-505. LAWFUL TRANSPORTATION.

Nothing contained in Sections 32A-12-503 and 32A-12-504 prohibits any carrier from:

- (1) transporting alcoholic products in the course of export from the state; or
- (2) transporting alcoholic products across any part of this state while in transit pursuant to a bona fide consignment of the alcoholic products to a person outside of this state.

32A-12-506. CARRIERS' RECORDS.

(1) All motor carriers and other persons transporting alcoholic products into or within this state shall keep books in which is entered, immediately on the receipt of any products, the name of every person to whom the products are consigned, the amount and kind received, and the date when delivered. The consignee shall sign the consignee's name, or in the case of a partnership or corporation, an agent authorized in writing, shall sign their name in the books.

(2) The books shall be open to inspection by any authorized official of the state or local authority at any time during business hours of the motor carrier. The books constitute prima facie evidence of the facts stated in the books and are admissible as evidence in any court proceeding to enforce this title.

PART 6
TRADE PRACTICES

32A-12-603. Tied house -- Prohibitions.

(1) (a) It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by acquiring or holding any interest in any license with respect to the premises of a retailer, except where the license is held by a retailer that is completely owned by the industry member.

(b) Interest in any retail license includes any interest acquired by a corporate official, partner, employee, or other representative of the industry member.

(c) Any interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.

(d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).

(2) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (2)(a):

(i) "interest" does not include complete ownership of a retail business by an industry member;

(ii) interest in retail property includes any interest acquired by a corporate official, partner, employee, or other representative of the industry member;

(iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;

(iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;

(v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and

(vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.

(3) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing, giving, renting, lending, or selling to the retailer any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to the exceptions enumerated in Subsection (4).

(b) (i) For purposes of this Subsection (3), indirect inducement includes:

(A) furnishing things of value to a third party where the benefits resulting from the things of value flow to individual retailers; and

(B) making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

(A) the thing of value was furnished to a retailer by the third party without the knowledge or intent of the industry member; or

(B) the industry member did not reasonably foresee that the thing of value would have been furnished to a retailer.

(iii) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Subsection (4) may be furnished directly by a third party to a retailer.

(c) (i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in

Subsection (4), is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(d) The furnishing of free warehousing by delaying delivery of alcoholic beverages beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(e) Any financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) (a) Notwithstanding Subsection (3), things of value may be furnished by industry members to retailers under the conditions and within the limitations prescribed in:

- (i) this Subsection (4); and
 - (ii) the applicable federal laws cited in this Subsection (4).
 - (b) (i) The following may be furnished by an industry member:
 - (A) a product display as provided in 27 C.F.R. Sec. 6.83;
 - (B) point of sale advertising materials and consumer advertising specialties as provided in 27 C.F.R. Sec. 6.84;
 - (C) things of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;
 - (D) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;
 - (E) combination packaging as provided in 27 C.F.R. Sec. 6.93;
 - (F) educational seminars as provided in 27 C.F.R. Sec. 6.94;
 - (G) consumer promotions as provided in 27 C.F.R. Sec. 6.96;
 - (H) advertising service as provided in 27 C.F.R. Sec. 6.98;
 - (I) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
 - (J) merchandise as provided in 27 C.F.R. Sec. 6.101; and
 - (K) outside signs as provided in 27 C.F.R. Sec. 6.102.
 - (ii) The following exceptions provided in federal law are not adopted:
 - (A) the exception for samples provided in 27 C.F.R. Sec. 6.91;
 - (B) the exception for consumer tasting or sampling at retail establishments provided in 27 C.F.R. Sec. 6.95;
- and
- (C) the exception for participation in retailer association activities provided in 27 C.F.R. Sec. 6.100.
 - (iii) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall keep and maintain a record:
 - (A) of all items furnished to a retailer;
 - (B) on premises of the industry member; and
 - (C) for a three-year period.
 - (c) A sample of liquor may be provided to the department under the following conditions:
 - (i) This Subsection (4)(c) includes a sample of:
 - (A) wine;
 - (B) heavy beer; or
 - (C) on or after October 1, 2008, a flavored malt beverage.
 - (ii) With the department's permission, an industry member may submit department samples to the department for product testing, analysis, and sampling.
 - (iii) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.
 - (iv) (A) A sample of liquor may not exceed 1 liter.
 - (B) Notwithstanding Subsection (4)(c)(iv)(A), a sample of the following may not exceed 1.5 liters unless that

exact product is only commercially packaged in a larger size, not to exceed 5 liters:

- (I) wine;
 - (II) heavy beer; or
 - (III) on or after October 1, 2008, a flavored malt beverage.
- (v) (A) A department sample submitted to the department:
- (I) shall be shipped prepaid by the industry member by common carrier; and
 - (II) may not be shipped by United States mail directly to the department's central administrative warehouse office.
- (B) A department sample may not be shipped to any other location within the state.
- (vi) A department sample submitted to the department shall be accompanied by a letter from the industry member:
- (A) clearly identifying the product as a "department sample"; and
 - (B) clearly stating the FOB case price of the product.
- (vii) (A) The department may transfer listed items from current stock for use as comparison control samples or to verify product spoilage as considered appropriate.
- (B) Each sample transferred under Subsection (4)(c)(vi)(A) shall be charged back to the respective industry member.
- (viii) The department shall:
- (A) account for, label, and record all department samples received or transferred;
 - (B) account for the department sample's disposition; and
 - (C) maintain a record:
 - (I) of the samples and their disposition; and
 - (II) for a two-year period.
- (ix) The department shall affix to each bottle or container a label clearly identifying the product as a "department sample".
- (x) A department sample delivered to the department or transferred from the department's current stock shall be disposed of at the discretion of the department in one of the following ways:
- (A) tested and analyzed with the remaining contents destroyed under controlled and audited conditions established by the department;
 - (B) entire contents destroyed under controlled and audited conditions established by the department; or
 - (C) added to the inventory of the department for sale to the public.
- (xi) Persons other than authorized department officials may not be in possession of department samples except as otherwise provided.
- (d) Samples of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (4)(d).
- (i) Samples of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.
- (ii) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation an industry member may furnish the next largest size.
- (e) Educational seminars may involve an industry member under the conditions listed in this Subsection (4)(e).
- (i) An industry member may provide or participate in educational seminars:
- (A) involving:
 - (I) the department;
 - (II) retailers;
 - (III) holders of educational or scientific special use permits;
 - (IV) other industry members; or
 - (V) employees of the persons listed in Subsections (4)(e)(i)(A)(I) through (IV); and

- (B) regarding such topics as:
 - (I) merchandising and product knowledge;
 - (II) use of equipment; and
 - (III) tours of alcoholic beverage manufacturing facilities.
- (ii) An industry member may not pay a department employee's, retailer's, or permittee's expenses or compensate them for attending a seminar or tour described in Subsection (4)(e)(i).
- (iii) (A) A liquor industry member for purposes of this Subsection (4)(e)(iii) includes an industry member for:
 - (I) wine;
 - (II) heavy beer; and
 - (III) on or after October 1, 2008, a flavored malt beverage.
- (B) A liquor industry member may conduct a tasting of the industry member's liquor products:
 - (I) for the department, at the department's request; and
 - (II) for licensed industry representatives, but only at the department's central administrative warehouse office.
- (C) The industry member may only use department or industry representative samples when conducting any tasting of the industry member's products.
- (iv) A beer industry member may conduct tastings of beer products for a licensed beer retailer either at:
 - (A) the industry member's premises; or
 - (B) a retail establishment.
- (v) Except to the extent authorized by commission rule, an alcoholic beverage industry member may not conduct tasting or sampling activities with:
 - (A) a retailer; or
 - (B) a member of the general public.
- (f) A beer industry member may participate in beer retailer association activities to the extent authorized by 27 C.F.R. Sec. 6.100.
- (g) (i) An industry member may contribute to charitable, civic, religious, fraternal, educational, or community activities.
- (ii) A contribution described in Subsection (4)(g)(i) may not be given to influence a retailer in the selection of the alcoholic beverage products that may be sold at these activities and events.
- (iii) An industry member or retailer violates this section if:
 - (A) the industry member's contribution described in Subsection (4)(g)(i) influences, directly or indirectly, the retailer in the selection of alcoholic beverage products; and
 - (B) a competitor's alcoholic beverage products are excluded in whole or in part from sale at the activity or event.
- (h) (i) An industry member may lease or furnish equipment listed in Subsection (4)(h)(ii) to a retailer if:
 - (A) the equipment is leased or furnished for a special event;
 - (B) a reasonable rental or service fee is charged for the equipment; and
 - (C) the period for which the equipment is leased or furnished does not exceed 30 days.
- (ii) This Subsection (4)(h) applies to the following equipment:
 - (A) a picnic pump;
 - (B) a cold plate;
 - (C) a tub;
 - (D) a keg box;
 - (E) a refrigerated trailer;
 - (F) a refrigerated van; or
 - (G) a refrigerated draft system.
- (i) (i) A liquor industry member for purposes of this Subsection (4)(i) includes an industry member for:
 - (A) wine;

(B) heavy beer; or
(C) on or after October 1, 2008, a flavored malt beverage.
(ii) A liquor industry member may assist the department in:
(A) ordering, shipping, and delivering merchandise;
(B) new product notification;
(C) listing and delisting information;
(D) price quotations;
(E) product sales analysis;
(F) shelf management; and
(G) educational seminars.
(iii) (A) Subject to Subsection (4)(i)(iii)(B), a liquor industry member may, for the purpose of acquiring new listings:

- (I) solicit orders from the department; and
- (II) submit to the department samples of their products under Subsection (4)(c) and price

lists.

(B) An industry member may not solicit either in person, by mail, or otherwise, any state store personnel for the purpose or with the intent of furthering the sale of a particular brand or brands of alcoholic beverage product as against another brand or brands.

(iv) (A) Any visitations to a state store or package agency by an industry member shall be confined to the customer areas of the store unless otherwise approved.

(B) Calls on the state warehouse by industry members are to be confined to the office area only unless otherwise approved.

(v) A beer industry member may assist licensed retailers in:

- (A) ordering, shipping, and delivering beer merchandise;
- (B) new product notification;
- (C) listing and delisting information;
- (D) price quotations;
- (E) product sales analysis;
- (F) shelf management; and
- (G) educational seminars.

(vi) A beer industry member may, for the purpose of acquiring new listings:

- (A) solicit orders from licensed retailers; and
- (B) submit to licensed retailers samples of their beer products under Subsection (4)(c) and price lists.

(5) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by paying or crediting the retailer for any advertising, display, or distribution service:

- (a) as defined in and to the extent restricted by 27 C.F.R. Sections 6.51 through 6.56; and
- (b) subject to the exceptions:

- (i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and
- (ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(6) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by guaranteeing any loan or the repayment of any financial obligation of the retailer.

(7) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any beer from the industry member to the exclusion in whole or in part of any beer products sold or offered for sale by other persons by extending to any retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge of the retailer through the payment of cash or its

equivalent, from all indebtedness arising from the transaction, so long as that beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month, and beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) First party in-state checks are considered cash payment if the checks:

(i) are honored on presentment; and

(ii) received under the terms prescribed in Subsection (7)(a).

(c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (7)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

(8) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by requiring:

(i) the department to take and dispose of a certain quota of any alcoholic products; or

(ii) a beer retailer to take and dispose of a certain quota of any beer products.

(b) (i) It is an unlawful means to induce to require:

(A) the department to purchase one product in order to purchase another; or

(B) a beer retailer to purchase one beer product in order to purchase another.

(ii) This Subsection (8)(b) includes:

(A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package such as:

(I) a distinctive decanter; or

(II) a wooden or tin box; or

(B) combination sales if one or more products may be purchased only in combination with other products and not individually.

(c) This Subsection (8) does not preclude the selling, at a special combination price, two or more kinds or brands of products so long as the department or beer retailer:

(i) has the option of purchasing either product at the usual price; and

(ii) is not required to purchase any product the department or beer retailer does not want.

(d) An industry member may package and distribute alcoholic beverages in combination with other nonalcoholic items or products.

(e) The combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

32A-12-604. COMMERCIAL BRIBERY.

This section adopts and makes applicable to all industry members, including beer industry members, doing business in this state 27 U.S.C. Section 205(c) and 27 C.F.R. Sections 10.1 through 10.54 which make it unlawful for any industry member, directly or indirectly or through an affiliate, to induce a wholesaler or retailer engaged in the sale of alcoholic beverages to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer.

32A-12-605. CONSIGNMENT SALES.

(1) This section adopts and makes applicable to all industry members, including beer industry members, doing business in this state 27 U.S.C. Section 205(d) and 27 C.F.R. Sections 11.1 through 11.46, which make it unlawful for an industry member, directly or indirectly or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of alcoholic beverages, or for any wholesaler or retailer

to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or that person's agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce.

(2) This section does not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

32A-12-606. UNLAWFUL ACTS INVOLVING CONSUMERS.

(1)(a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to give away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department and local industry representative licensees to the extent authorized by this title.

(b) This Subsection (1) does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served:

- (i) as part of a promotion of the industry member's products; or
- (ii) as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to engage in any advertisement or promotional scheme that requires the purchase or sale of an alcoholic beverage, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity.

(3) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to pay, give, or deliver to any person any money or any other thing of value, including rebates, refunds, or prizes, based upon the purchase, display, use, sale, or consumption of alcoholic beverages.

(4) It shall be unlawful for any industry member or retailer to sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that:

- (a) overtly promotes the consumption of alcoholic products;
- (b) offers alcoholic products to the general public without charge; or
- (c) takes place on the premises of a school, college, university, or other educational institution.